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IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHATTISGARH.

Criminal Appeal No. 129/2001.

APPELLANT :- Kawasi Jalnu son of Kawasi Gango
(In Jail Custody) aged 40 years, Caste Madia,
resident of Neelagontu Bodenar,
P.S.Bodenar, District Bastar
Chattisgarh.

VS.

RESPONDENT
NON APPLICANT :- State of Chattisgarh through
P.S. Bodhenar, District Bastar,
Chattisgarh.

CRIMINAL APPEAL UNDER SECTION 374(2)CR.PC.

(17)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... (S) A 129/ **सन्** 200/

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

10-11-2006

Mr. V.P. Gupta, counsel for the appellant.

Mr. D.C. Pandey, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 7-12-2000 passed by the 3rd Additional Sessions Judge, Jagdalpur, in Sessions Trial No.53/2000, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year.

The case of the prosecution, in brief, is that on the fateful day i.e. 3-11-1999 in the evening when deceased Kawasi Aaytu was at his residence with his wife, the accused/appellant came to his house and asked him "let us go for consuming liquor", and took him along with him. On the way, the accused attacked the deceased with axe on his head & hand as a result of which the deceased fell down and succumbed to the injuries sustained by him. The incident was witnessed by Kawasi Hungi (PW-2), wife of the deceased and Kawasi Dulgi (PW-3), daughter-in-law of the deceased. The matter was reported by Kawasi Hidma, son of the

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deceased, in Police Station: Gidam under merg intimation Ex.P-4, based on that, the F.I.R. Ex.P-3 was registered against the accused for commission of offence under Section 302 of the I.P.C.

The Investigating Officer left of the scene of occurrence and after giving notice Ex.P-5 to the Panchas prepared the inquest report (Ex.P-6) of the body of Kawasi Aaytu. The body of Aaytu was sent for post-mortem examination to the Primary Health Centre, Badekilepal, where Dr. N.C. Lange (PW-1) conducted post-mortem. He noticed two injuries, one was contusion on frontal region of the head of the deceased in the size of 4" x 1 ½" and the second injury was contusion in the size of 1 ½" x 2" over left arm, and the bone was found fractured. The doctor opined that the cause of death was coma due to cerebral injury and shock due to internal hemorrhage. He prepared the report Ex.P-1. The weapon of offence, axe, was sent for opinion to the doctor under Ex.P-8 and after examination of the axe, the doctor gave the opinion Ex.P-2. The axe was taken into possession under Ex.P-11.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Jagdalpur, who in turn, committed the case to the Sessions Judge, Jagdalpur, from where learned 3rd Additional Sessions Judge received the case on transfer for trial.

The prosecution examined six witnesses in order to establish the charge against the accused. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the

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prosecution evidence and stated that he is innocent and he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused.

We have heard Mr. V.P. Gupta, learned counsel for the appellant and Mr. D.C. Pandey, learned Panel Lawyer on behalf of the State/respondent.

The homicidal death of Kawasi Aaytu has not been disputed by learned counsel for the appellant. Apart from that, from the medical evidence of Dr. N.C. Lange (PW-1) and the ocular evidence of Kawasi Hungi (PW-2) & Kawasi Dulgi (PW-3), it is established that the death of Kawasi Aaytu was homicidal in nature.

As far as involvement of the accused in the crime in question is concerned, Mr. Gupta, learned counsel for the appellant, argued that there is no independent witness in this case and in the post-mortem report, the cause of death has not been mentioned, even no blood stains have been found on the axe and the axe has not been recovered at the instance of the accused from his possession.

On the other hand, learned Panel Lawyer for the State/ respondent supported the judgment of the trial Court.

As far as non-examination of independent witnesses is concerned, in the first instance, there is nothing on record, which shows that the crime in question was witnessed by any independent witness. Moreover, the evidence of related witnesses cannot be rejected out rightly on the ground that they are related

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or interested in the deceased. As per the settled principles of law, the Court is required to scrutinize the evidence of related witnesses carefully and with great circumspection in order to reach to the right conclusion.

Kawasi Hungi (PW-2) is the wife of the deceased and Kawasi Dulgi (PW-3) is the daughter-in-law of the deceased who have categorically stated in their evidence that in the evening they were at their residence, even deceased Kawasi Aaytu was at residence, at that time, the accused came and asked the deceased for going with him for consuming liquor. He took the deceased along with him, they also followed them and they saw that the accused assaulted the deceased with the axe on his head & hand as a result of which the deceased fell down and died instantaneously. In cross-examination of these two witnesses, defence has not been able to elicit any circumstance, which makes the evidence of these witnesses unreliable or untrustworthy. Therefore, there was no reason before the trial Court or this Court to disbelieve the evidence of these witnesses only on the ground that they are relatives of the deceased. Their evidence stands corroborated by the fact that when a Panchayat was convened, in that Panchayat, the accused made extra judicial confession and said that as he was cultivating the land of his brother Bonja and the deceased was saying that he will not allow him to cultivate the said land, that is why he attacked the deceased with the axe. Kawasi Hidma (PW-4) who is the son of the deceased, has categorically stated in his evidence that the Panchayat was convened and in that Panchayat,

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the accused made a confession that he has attacked the deceased with the axe. Even Kawàsi Hadma (PW-5) who has been declared hostile, in para 3 of his evidence has categorically stated that the accused made extra judicial confession before the Panchayat and said that, as the deceased was saying to the accused that he will not allow him to cultivate the land of his brother Bonja, that is why he attacked the deceased with the axe and murdered him. Therefore, in view of the evidence of these two witnesses (PW-4 & PW-5), it is established that the accused made extra judicial confession and that was voluntary and true. In the circumstances, this extra judicial confession made before the Panchayat corroborates the evidence of Kawasi Hungi (PW-2) & Kawasi Dulgi (PW-3). In view of the above ocular and circumstantial evidence i.e. the extra judicial confession, involvement of the accused in the crime in question is established.

As far as the argument advanced by learned counsel for the appellant that the cause of death of the deceased has not been mentioned in the post-mortem report Ex.P-1 is concerned, it has been mentioned by Dr. N.C. Lange (PW-1), who conducted post-mortem on the body of the deceased, that the cause of death was coma due to cerebral injury and shock due to internal hemorrhage. In his evidence, the doctor has categorically stated that the death was homicidal in nature and on account of internal haemorrhage Kawasi Aaytu died. Therefore, there is no merit in this argument.

As far as the argument of learned counsel for the accused that the axe in question was not recovered from the possession of

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the accused and no blood was found, even if this argument is accepted, it is not going to benefit the accused for the reason that in view of the ocular evidence of Kawasi Hungi (PW-2) & Kawasi Dulgi (PW-3), as also the extra judicial confession made before the Panchayat, involvement of the accused in the crime in question is established.

No other argument has been advanced by learned counsel for the appellant.

Therefore, we do not find any illegality or infirmity in the judgment of the trial Court.

In the result, the appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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